

The Business Council of Fairfield County

Strengthening Businesses. Strengthening Communities.

September 27, 2013

The Honorable Kevin K. Washburn
Assistant Secretary - Indian Affairs
Department of the Interior
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street NW., MS 4141
Washington, D.C. 20240

Re: Comments of The Business Council of Fairfield County on BIA's Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; 1076-AF18.

Dear Secretary Washburn and Ms. Appel:

The Business Council of Fairfield County (Council) hereby submits these comments on the Preliminary Discussion Draft of Proposed Revisions to the Federal Acknowledgement Regulations (25 C.F.R. Part 85) issued by the Office of the Assistant Secretary – Indian Affairs (AS-IA) of the Bureau of Indian Affairs (BIA) on June 21, 2013 (Acknowledgment Draft). The Council submits these comments because some of the changes proposed in BIA's Discussion Draft will have adverse consequences for the businesses represented by the Council. While the Council supports BIA's goals of improving the efficiency of the tribal acknowledgment process, it is critical that BIA ensure a fair and objective process remains in place when making such decisions. Entities that are acknowledged as tribes can take land into trust, exercise sovereign powers, open casinos in some states, and undertake other actions that have major impacts on the local governments, private landowners, and the business community.

The Business Council of Fairfield County

The Business Council of Fairfield County was formed in 1970 by business leaders engaged in an effort to build more livable, workable communities. We are committed to maintaining and improving the economic vitality of southwestern Connecticut. We advocate for a positive business environment, work to ensure a quality business structure, and seek to create opportunities for diverse businesses to grow, develop, and locate within the region.

The Council supports efforts to ensure that legitimate applications for tribal recognition are promptly and efficiently addressed by BIA, and that applicants, as well as interested parties, are treated with respect. Tribal recognition bestows important benefits on petitioner groups, and those entities entitled to tribal recognition should not be denied access to those benefits. At the same time, BIA has a critical role as the decision maker to ensure that the benefits accorded by federal acknowledgment are preserved for legitimate tribal entities, and to screen out those who

have no valid claim to tribal recognition and would take advantage of the process solely to gain access to those benefits. If BIA does not fairly and objectively fulfill this role, its authority to administer the tribal acknowledgement process must be called into question considering the lack of any clear delegation of power from Congress or delineation of statutory standards to the Executive Branch for this purpose. The extreme nature of the Acknowledgment Proposal highlights the importance of this legal issue.

Comments

The Business Council has been an active participant in tribal acknowledgment matters in Connecticut, including the completed actions on the Golden Hill Paugussett (GHP), Schaghticoke Tribal Nation (STN), and Eastern Pequot/Paucatuck Eastern Pequot (EP) petitions. We participated in these matters because of the serious negative effects that tribal acknowledgment, and the potential for associated casino development, would have on the economy and society of southwestern Connecticut. All of these groups expressed an interest in developing large-scale casinos and pursuing land claim lawsuits in Connecticut if they achieved acknowledged status under federal law. In these circumstances, the infrastructure of the Fairfield County region, already insufficient to meet current demands, would literally confront gridlock, resulting in considerable financial losses to Business Council members and the overall decline of the quality-of-life within this region. Our members and their employees also would face the prospect of clouds on the titles of their property as a result of land claim lawsuits by any successful petitioner groups. The mere filing of such a lawsuit could interfere with the title of such property, resulting in further economic harm and uncertainty.

In the face of such severe threats, the Business Council determined that it was necessary to monitor and participate in the review of the EP, GHP, and STN petitions. Our involvement consisted of tracking all actions that occurred under the petitions, including lawsuits brought by the groups after the negative determinations against them. In addition, we played an active role in the successful effort to rescind the Connecticut "casino nights" statute that opened the door to large-scale Indian gaming and in developing information used for public education purposes about the negative consequences that would result from the acknowledgment of any additional tribes in Connecticut. In doing so we maintained a very clear and open position that petitioner groups which met the federal standards should be granted tribal status, but only if the Department of the Interior applied valid criteria and conducted a fair and objective process.

Ultimately, the Department of the Interior properly denied acknowledgment to all of these Connecticut groups. It did so, however, only after the strong decision of the Interior Board of Indian Appeals (IBIA) in response to the appeals filed by interested parties that it was improper to rely upon the mere existence of State reservations for these groups as evidence under the federal criteria in 25 C.F.R. Part 83.7. In establishing this legal ruling, the IBIA effectively reversed the improper reliance on State reservations to help meet criteria 83.7(b)(social community) and (c)(political authority) that had been forced upon the Branch of Acknowledgment and Research by political appointees in the context of the proposed finding for the EP petitioners in 2000 (changing negative proposed findings to positive). The grounds for the Revised Final Determinations (RFD) against these groups have since been upheld in court, confirming that IBIA and the Department were correct to reject the State reservation basis for

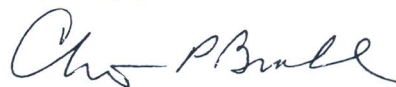
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federal acknowledgment. As a result, in the end, the Part 83 process worked to bring about a correct and fair and objective result for every petition involving a Connecticut group.

Having served as witness to the federal acknowledgment process working successfully and yielding a proper result that insulated the technical findings under the criteria from political interference, the Business Council is deeply troubled by the proposed revisions announced by the Department on June 21. While ostensibly claiming to seek changes that would make Part 83 more efficient and less expensive, the Acknowledgment Proposal would actually have the opposite effect while also dramatically relaxing the criteria for acknowledgment and making it possible, for the first time ever, for denied petitioner groups to reapply. In addition, in an action that appears to have been directed specifically at Connecticut for the purpose of automatically awarding federal tribal status to the denied groups, the Acknowledgment Proposal reverses the IBIA decision and RFDs and gives controlling effect to the existence of state reservations. Finally, to complete the wholesale alteration to an administrative process that produced correct results in Connecticut, the Acknowledgment Proposal would greatly limit the rights on third parties to participate, undermining the fairness, objectivity, and completeness of the record upon which acknowledgment determinations are made. For these reasons, the Business Council is adamantly opposed to the Proposal and recommends that it be withdrawn in its entirety. Once this is done, the Department should start with a new administrative improvement effort that will be informed by public comment and directed in a focused and legitimate manner on ways to make the Part 83 process work in a more streamlined and cost-effective manner without sacrificing decades of precedent (*e.g.*, the requirement to prove continuous tribal existence from at least 1789, the requirement for external identification as a tribe), substantially relaxing the criteria, or diminishing the rights and role of interested parties.

Thank you for considering these comments. Please contact me if the Council can be of further assistance.

Very truly yours,



Christopher P. Bruhl
President & CEO

cc: Secretary of the Interior Sally Jewell
Connecticut Congressional Delegation
Governor Daniel Malloy
Attorney General George Jepsen